

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 115 of 2003

PAN AFRICA BUILDERS & CONTRACTORS LIMITEDPLAINTIFF

V E R S U S

1. NATION MEDIA GROUP LIMITED

2. DAVID MUGONYIDEFENDANTS

R U L I N G

The Plaintiff, despite due service, has not filed any papers in response to the Defendants' application by notice of motion dated 25th June, 2008. Nor was there appearance for it at the hearing of the application on 6th October, 2008.

The application seeks, under **Order 16, rule 5(c)** of the **Civil Procedure Rules** (the Rules), dismissal of the Plaintiff's suit for want of prosecution. Under that rule, if, within three months after the removal of the suit from the hearing list the plaintiff, or the court of its own motion on notice to the parties, does not set down the suit for hearing, the defendant may either set the suit down for hearing or apply for its dismissal.

I have read the supporting affidavit and perused the court record. I have also given due consideration to the submissions of the Defendants' learned counsel. The suit was fixed for hearing for 30th and 31st July, 2007. But it was not confirmed for hearing; it is thus deemed, for purposes of this application, to have been removed from the hearing lists of 30th and 31st July, 2007. Since that time the Plaintiff has not fixed it for hearing. The present application was filed on 1st July, 2008. There was thus a delay of eight (8) months on the part of the Plaintiff.

The Plaintiff has not bothered to explain this delay. The application is infact unopposed in that the Plaintiff has not filed any papers in response to the application. In the circumstances I will allow the application. The Plaintiff's suit is hereby dismissed with costs to the Defendants for want of prosecution. The Defendants are also awarded costs of this application. It is so ordered.

DATED AT NAIROBI THIS 5TH DAY OF NOVEMBER, 2008

H. P. G. WAWERU

J U D G E

DELIVERED THIS 7TH DAY OF NOVEMBER, 2008